

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency	Administrative Office of the Courts
Decision Package Title	Trial Court Funding for Language Access Criminal and Civil
Budget Period	2015-2017 Biennial Budget
Budget Level	Policy Level

Agency Recommendation Summary Text

Funding is requested to extend a grant program to improve the quality and availability of interpreting services and to reduce interpreter costs at the local level. The total increase reflects state resources to fund interpreter services in all criminal and civil cases at all levels of trial courts. This funding increase would achieve 100% funding over three biennia.

Fiscal Detail

Operating Expenditures	FY 2016	FY 2017	Total
001-1 General Fund State	\$ 3,305,000	\$ 3,304,000	\$ 6,609,000
Staffing	FY 2016	FY 2017	Total
FTEs (number of staff requested)	.5	.5	.5

Package Description

Introduction

The administration of justice requires clear communication in the courtroom. Using properly credentialed interpreters is imperative in cases involving people who have hearing loss and need sign language interpreters or those who have limited English proficiency as a result of national origin.

State and federal laws require Washington courts to provide meaningful access to court proceedings and court services for persons who have functional hearing loss or have limited English proficiency. Failure to provide clear, concise interpretation services denies these individuals that opportunity, leading to mistrust, confusion, administrative inefficiencies, additional

costs caused by court hearing delays and continuances, and potentially incorrect judicial orders and verdicts.

According to the U.S. Census the number of foreign-born, limited English proficient (LEP) persons age 5 and older in Washington increased by 50.1% between 2000 and 2010 from 279,497 to 419,576. In addition to that population, the number of persons with hearing loss needing court interpreting services has grown, as evidenced by the increasing expense local jurisdictions have faced for sign language interpreting costs. This growth of demand within Washington has directly impacted local courts resources, and their ability to fund state and federal requirements to provide interpretation services.

Legal Obligations

RCW Chapters 2.42 and 2.43 prescribe the requirements for providing court interpreter services in Washington. RCW 2.42.120 requires courts to pay sign language interpreter costs for all court proceedings for parties, witnesses and parents of juveniles, court-ordered programs or activities, and communication with court-appointed counsel.

RCW 2.43.030 compels courts to "... use the services of only those language interpreters who have been certified by the Administrative Office of the Courts..." when appointing interpreters to assist LEP litigants and witnesses during legal proceedings. RCW 2.43.040 instructs courts to pay all interpreting costs in criminal cases, mental health commitment proceedings, and all other legal proceedings initiated by government agencies. It further requires courts to pay all interpreting costs in civil matters for LEP persons who are indigent.

Courts that are direct or indirect recipients of federal funding are obligated to meet higher standards of ensuring language access to the LEP public. These courts are required to take reasonable steps to meet standards established by Title VI of the 1964 Civil Rights Act and the Omnibus Crime Control and Safe Streets Act, which taken together, have more expansive access requirements for ensuring language access. Under the DOJ standards for compliance with those statutes, state courts receiving federal financial assistance cannot allocate or otherwise charge the costs of interpreter services to the parties involved in the court proceeding, including civil cases, or make any type of indigent determinations that assess the ability of a party to contribute to the costs. Furthermore, to be consistent with DOJ language access requirements, courts must provide meaningful access to all court programs and activities, including court functions provided outside of the courtroom.

The inability of many local courts to fully fund interpreter services creates a non-compliance atmosphere across the state that may result in the withdrawal of federal funds by the U.S. Department of Justice.

History of State Funding

The 2007 Legislature recognized the increased financial demand faced by local courts to ensure language access for Deaf and LEP communities, and allocated \$1.9 million to the Administrative Office of the Courts (AOC) for purposes of passing that funding to local courts to support language access costs. This money was designed to be used in assisting courts develop and implement Language Access Plans, as well as offset 50% of interpreter expenses for qualifying courts. The AOC developed an effective program to improve the quality of interpreting, reduce costs at the local level, and improve compliance with state and federal requirements.

After nearly seven years of implementation, state funds transformed court interpreter services for those counties. Because reimbursement eligibility requires hiring credentialed court interpreters and paying them fair market rates, the Washington courts and communities have received higher quality interpreting services. Participating courts submit data on their interpreter usage to the AOC, which helps identify language needs, actual costs, and geographic trends. The 50% cost-sharing requirement has encouraged participating courts to implement cost-saving and quality-ensuring practices such as web-based scheduling, multi-court payment policies, grouping of interpreter cases, and sharing of staff interpreters.

Funding Levels

In 2007 the Washington Judiciary asked the Legislature to provide 50% reimbursement for the cost of court interpreters statewide. In response the Legislature appropriated \$1.9 million biannually in pass-through money to the courts. This money was designed to be used in assisting courts develop and implement Language Access Plans (LAPs) as a condition of receiving funding, as well as offset 50% of interpreter expenses for those courts with LAPs. Due to the extraordinary fiscal environment in 2009, the LAP funding was eliminated, and the reimbursement funds dropped to \$1,221,004 biannually. This represented a decrease of 36% in language access funding for participating local trial courts that met the reimbursement requirements and the funding was only sufficient for fifty-two superior, district and municipal courts representing ten counties. While the program has continued in light of those cuts, the funding only lasts approximately seven months per fiscal year. Funding is clearly insufficient to expand into additional trial courts necessary to maintain compliance with federal statutes and regulations as well as meet current local funding requirements under the current allocation scheme.

Narrative Justification and Impact Statement

This package contribute to the Judicial Branch Principle Policy Objectives identified below.

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

Washington courts will openly, fairly, efficiently and effectively administer justice in all criminal and civil cases, consistent with constitutional mandates and the judiciary's duty to maintain the highest level of public trust and confidence in the courts.

Judicial officers cannot effectively preside over proceedings involving Deaf or limited English proficient (LEP) parties, witnesses or participants without being able to accurately communicate with them. Public trust and confidence in the courts begins, at a minimum, with the public being able to effectively access and participate in the judicial process. Such participation is not possible for individuals with hearing loss that need sign language interpretation and for LEP individuals without quality interpretation services.

Accessibility. *Washington courts, court facilities and court systems will be open and accessible to all participants regardless of cultural, linguistic, ability-based or other characteristics that serve as access barriers.*

Court proceedings and court services are not accessible to Deaf persons or LEP persons who are not provided with meaningful access using interpreting services. In addition, those individuals who interact with court staff for civil and criminal matters, such as child support

matters, domestic violence protection forms and services, making payment plans for victim restitution or court fines, and/or housing evictions, are often unable to fully understand what is required due to inability of many courts to afford using quality interpreting services at those court services access points.

Commitment to Effective Court Management. *Washington courts will employ and maintain systems and practices that enhance effective court management.*

Efficient and effective court interpreter management requires implementation of practices and policies which save money, yet ensure high quality language access. Courts involved with the state reimbursement program have taken substantial steps to modify their interpreter scheduling and payment practices to achieve better economies of scale, sharing of resources, and collaborating with neighboring courts.

Measure Detail

Impact on clients and service

With the availability of State funding, nearly all local and county courts will be able to provide court interpreting services and will more easily be able to afford the higher costs associated with credentialed court interpreters, especially if the market cost for those services are extraordinary due to language resource scarcity or location.

Access to higher quality interpreters will improve the accuracy of communication in the courtroom. It would also create a more seamless integration of access to court functions and court services outside the courtroom for those with language barriers.

Impact on other state services

None

Relationship to Capital Budget

None

Required changes to existing Court Rule, Court Order, RCW, WAC, contract, or plan

Changes are required to RCW 2.43.040 (2), (3) and (5).

Alternatives explored

There are no local funding alternatives that would not require state support to be in compliance with state judicial policy objectives and federal statutory requirements as regards language access obligations. With limited budgets, local courts must prioritize for which hearing types they will provide interpreters at court expense. Therefore, some courts continue to charge litigants for interpreter expenses in non-indigent civil matters as is allowed by RCW 2.43 language, which jeopardizes the state's federal funding compliance for court programs.

Distinction between one-time and ongoing costs and budget impacts in future biennia

Court interpreter funding will be an ongoing cost, fluctuating based on immigration trends in the Washington population.

Effects of non-funding

Prior to program implementation, courts paid lower hourly rates for interpreting services. As a result of this program participant courts are paying higher hourly interpreter rates for credentialed interpreters in order to receive higher quality services. While those courts are spending less local money because of the State's contribution, the rates paid by those courts have greatly impacted courts not participating in the program because interpreters now expect all trial courts to pay the same higher rates. Courts not in receipt of state funding are forced to either pay the higher hourly rates in order to ensure interpreting services, or risk losing interpreters to the program participant courts who pay higher amounts. Most Washington trial courts have increased their interpreter fees without increased revenues, thereby reducing funds for other court services. As previously noted, the current funding level only lasts for a portion of the fiscal period for the majority of participating courts. When the funding is used up, those courts often resort to using non-credentialed interpreters that charge less, which defeats the judicial policy purpose of ensuring meaningful access through the use of quality services based on a quality threshold.

Additionally, US DOJ and King County Superior Court have mutually agreed on ways to satisfy federal expectations to provide interpreters for non-indigent civil litigants and is likely that the agreement will serve as a baseline for compliance for other Washington courts in any future DOJ action. Full state funding will address the US DOJ mandate.

Expenditure calculations and assumptions and FTE assumptions

Interpreter Cost Data:

While the AOC has court interpreter data from a variety of courts, it does not have full data on actual court interpreter expenditures for all Superior, District and Municipal trial courts. To estimate costs, it is necessary to categorize court jurisdictions as urban county, rural county and rural county with a city, because typically courts must pay higher costs for interpreter services when interpreters do not live nearby. Most credentialed (certified or registered) court interpreters live in cities.

To calculate a measure of projected expenditures, the estimate includes a ratio of proceedings covered by current statute to those civil proceedings that would be added. According to 2011 case load data, approximately one-third more superior court proceedings would be added due to the removal of the indigency criteria. By applying that ratio to the total reported spending from case load data on criminal interpretation (\$4,905,417), it is possible to derive an estimate for spending on civil proceedings and to come up with a statewide estimate total for interpreter services ($\$4,905,417 \times 133\% = \$6,524,276$).

The state expenditure cost for one-half of the criminal and civil interpreter costs is \$3,262,138 per year.

As the survey figures represent 2010 cost and 2011 case load data, the most conservative approach to estimating the biennial expenditure for FY 2015-17 is to use the annual figure using superior court-based case load data. This amounts to at least \$6.524 million per biennium. The figure can be further refined in order to be more accurate due to the increase in interpreter rates and caseloads across the state since the 2011 survey.

Managing the court interpreter reimbursement program at current levels requires a significant amount of staff time. Funding for an additional .5 FTE is requested as a Range 62 (annual salary and benefits \$46,529) to serve as a project manager to coordinate funding distribution and oversee deliverables. The project manager will develop and monitor contracts, evaluate and verify data that is reported, audit participating courts to ensure accuracy in reported numbers, and provide technical support to participating courts. Expansion of the state grants to local court jurisdictions requires additional staff.

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 46,000	\$ 46,000	\$ 92,000
Non-Staff Costs	\$ 3,259,000	\$ 3,258,000	\$ 6,517,000
Total Objects	\$ 3,305,000	\$ 3,304,000	\$ 6,609,000